



**MASTER CONTRACT No. BW9130-5/19**

**for**

**IBM Hardware, Software, Maintenance, Support, And Professional Services**

**between**

**IBM CORPORATION**

**and**

**Miami-Dade County, Florida**

THIS HARDWARE, SOFTWARE, MAINTENANCE, SUPPORT, AND PROFESSIONAL SERVICES, AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY" or "MDC"), AND IBM CORPORATION, A NEW YORK CORPORATION, HAVING ITS PRINCIPLE PLACE OF BUSINESS AT 5301 BLUE LAGOON DR., SUITE 390, MIAMI, FL 33126 (HEREINAFTER REFERRED TO AS THE "IBM" or "SELLER").

WITNESSETH:

WHEREAS, IBM has offered to provide Hardware, Software, Maintenance, Support, and Professional Services that shall conform to the terms and conditions of this Agreement including all associated addenda and attachments, incorporated herein by referenced; and,

WHEREAS, the County desires to procure from IBM such Hardware, Software, Maintenance, Support, and Professional Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The term "Change Order" or "Extra Work" or "Additional Work" to mean work resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in a mutually approved Statement of Work (SoW).
- b) The terms "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, and all associated addenda and attachments.
- c) The term "Contract Date" to mean the date on which this Agreement is effective.

- d) The terms "Contractor" or "Consultant" or "Vendor" to mean International Business Machines Corporation ("IBM"), ("IBM Corporation") and its permitted successors and assigns.
- e) The term "County" to mean Miami-Dade County, a political subdivision of the State of Florida, including any subcontractors, agents, authorized by the County to use the Licensed Software in accordance with this Agreement.
- f) The term "Days" to mean calendar days.
- g) The term "Deliverables" to mean all documentation and any items of any nature submitted by IBM to the County's Project Manager for review and approval pursuant to a mutually agreed to Statement of Work (SoW).
- h) The term "Existing Hardware" to mean the hardware currently installed at a Miami-Dade County site as identified in any attachments to this Agreement.
- i) The term "Hardware" to mean the new hardware components sold by the IBM under this Agreement.
- j) The term "Licensed Software" to mean the computer programs licensed by IBM under this Agreement.
- k) The term "Maintenance" to mean IBM Maintenance Services as set forth in the IBM product documentation as provided under this Agreement.
- l) The terms "Scope of Services" or "Scope of Work" to mean "Scope of Services" that details the work to be performed by IBM or Subcontractor under a mutually agreed upon Statement of Work (SoW).
- m) The terms "Subcontractor" or "Subconsultant" to mean any person, firm, entity or organization, other than the employees of IBM, who contracts with IBM to furnish labor, or labor and materials, in connection with the Work or Services to the County, whether directly or indirectly, on behalf of IBM as provided under this Agreement.
- n) The term "Third-Party" to mean any company or subcontractor, other than IBM, who will provide software, hardware, and/or services in order to fulfill the requirements under this Agreement.

## **ARTICLE 2. CONTRACT TERM & CONDITONS**

This Agreement shall succeed Contract No. SS5851-4/10 expiring on December 31, 2009, between Miami-Dade County, Florida ("Miami-Dade County" and IBM Corporation ("IBM"), which became effective September 27, 2005, including IBM Customer Agreement SP4-487, December 31, 1997. Products and Maintenance Services purchased under Contract No. SS5851-4/10 shall continue to be governed by the terms and conditions of Contract No. SS5851-4/10-4, notwithstanding the expiration of that contract, for the remainder of the term identified in such purchase of Products or Maintenance Services or until the County elects to acquire those Products and Maintenance Services under the terms and conditions of this Agreement.

This Contract shall include the following attachments:

Attachment 1: IBM Proposal Letter Dated June 26, 2009  
IBM Training  
IBM Customer Agreement (ICA)  
IBM Delegation of Authority

Attachment 2: Hardware & Software Maintenance (SWMA)  
Master Services Attachment for Service Elite  
Master Service Optional Services  
Schedule for Services Elite (inventory listing as of 09/08/2009)

Attachment 3: zSeries & Passport Advantage Software Inventory & Agreements  
IBM International Passport Advantage Agreement, Miami-Dade County Site No. 07517-7162424  
IBM International Program License Agreement (IPLA)  
zSeries Inventory as of 06/25/2009  
Passport Advantage Inventory as of 06/25/2009

Attachment 4: Passport Advantage Software  
Listing of IBM Passport Advantage Software Level J Pricing as of 06/26/2009

Attachment 5: Professional Services  
Appendix C: IBM GSA Schedule GS-35F-4983H, Information Technology Services Charges

Attachment 6: Agreement for Exchange of Confidential Information

Attachment 7: IBM Sustainability & Energy Solutions (Green Initiatives)

Should there be any inconsistency between the terms and conditions of this Agreement and any terms reference in any Attachments to this Agreement, the terms and conditions of this Agreement shall take precedence unless modified by a mutually agreed to Amendment to this Agreement.

### **ARTICLE 3. CONTRACT TERM**

3.1 The Agreement shall become effective upon approval of the County's Board of County Commissioners and the expiration of any Mayoral veto period and shall be for the duration of one (1) year, with five (5) one (1) year options to renew, by mutual agreement of Miami-Dade County and the Seller.

3.2 Extension. By mutual agreement of Miami-Dade County and the Seller this Agreement may be extended for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals.

3.3 Notification. By mutual agreement of Miami-Dade County and the Seller, this Agreement may be may be further extended beyond the initial one hundred-eighty (180) calendar day extension period.

### **ARTICLE 4. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by overnight courier or certified mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows with parallel e-mail notification:

#### **(1) To the County Project Manager for each area:**

Miami-Dade County  
Aviation Department  
Building 3040, 1<sup>st</sup> Floor  
Miami, FL 33102

Attention: Diana Olivari  
Phone: 305-869-1267

Fax: 305-869-5639  
E-mail: [dolivari@miami-airport.com](mailto:dolivari@miami-airport.com)

Miami-Dade County  
Enterprise Technology Services Department  
5680 S.W. 87<sup>th</sup> Avenue  
Miami, FL 33173  
Attention: Mirta Lopez Cardoso  
Phone: 305-596-8690  
Fax: 305-275-7696  
E-mail: [mlopezm@miamidade.gov](mailto:mlopezm@miamidade.gov)

Miami-Dade County  
General Services Administration  
111 N.W. 1<sup>st</sup> Street, Suite 2400  
Miami, FL 33128  
Attention: Glen Cleghorn  
Phone: 305-375-1520  
Fax: 305-375-4462  
E-mail: [cg0182@miamidade.gov](mailto:cg0182@miamidade.gov)

Miami-Dade County  
Clerk of the Courts  
140 West Flagler Street, Suite 1501  
Miami, FL 33128  
Attention: Charise Lubeck  
Phone: 305-375-2060  
Fax: 305-375-1922  
E-mail: [charis@miamidade.gov](mailto:charis@miamidade.gov)

Miami-Dade County  
Government Information Center  
111 N.W. 1<sup>st</sup> Street, Suite 2510  
Miami, FL 33128  
Attention: Deborah Dean  
Phone: 305-375-1503  
Fax: 305-375-2004  
E-mail: [dd017@miamidade.gov](mailto:dd017@miamidade.gov)

Miami-Dade County  
Police Department  
9105 N.W. 25<sup>th</sup> Street, Room 3055  
Doral, FL 33172-1500  
Attention: Laura K. Romano  
Phone: 305-471-2596  
Fax: 305-471-2996  
E-mail: [lromano@mdpd.com](mailto:lromano@mdpd.com)

**and to the Contract Manager:**

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Attention: Julian R. Manduley  
Phone: (305) 375- 2179  
Fax: (305) 375- 5688  
E-Mail: [jmandul@miamidade.gov](mailto:jmandul@miamidade.gov).

**(2) To the Seller**

IBM Corporation  
Attention: Emily B. Loos  
5301 Blue Lagoon Drive, Suite 390  
Miami, FL 33126

Phone: 305-442-3924  
Fax: 305-442-3924  
E-mail: [eloos@us.ibm.com](mailto:eloos@us.ibm.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 5. PRICING**

The Seller may offer additional incentive discounts to those referenced in this Agreement to Miami-Dade County at any time during the contractual term and any extensions thereof. The Seller agrees all pricing offered under this contract shall not exceed the then current IBM GSA Schedule price list to include the GSA Labor Hourly Rates (Attachment 5: IBM GSA Schedule GS-35F-4983H, Information Technology Services Charges).

Offered prices under this contract are guaranteed for the life of the contract to the extent specified in published IBM GSA price tables or as otherwise as price table attachments to this contract; and, are under the then-current IBM GSA Schedule Contract, provided that: (1) Successor IBM GSA Schedule contract(s) are awarded to IBM in subsequent Government fiscal years, (2) Products and services for which prices are offered are available under the IBM GSA Schedule contract in subsequent government fiscal years, and (3) The Seller continues to provide maintenance/services for these products.

**ARTICLE 6. PROMPT PAYMENT TERMS**

This Article It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, the County's position with respect to disputes for payment of obligations shall be made by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Seller warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Seller deemed necessary in order to determine the price the Seller will charge to provide the Work and Services to be performed under this Agreement. The compensation for all Work and Services performed under this Agreement, including all costs associated with such Work and Services, shall be in accordance with Article 5, "Pricing." The County shall have no obligation to pay the Seller any additional sum in excess of what is stated in Article 5, "Pricing", except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Seller.

All Services undertaken by the Seller before County's approval of this Agreement shall be at the Seller's risk and expense.

With respect to travel costs and travel related expenses, the Seller agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

7.1 Invoices. All invoices issued by the Seller, shall be supported by any reasonable documentation required by the County. Invoices shall show the County's contract number, and shall have a unique invoice number assigned by the Seller.

Invoices and associated back-up documentation shall be submitted by the Seller to the County as follows:

**(1) To the County Project Manager for each area:**

Miami-Dade County  
Aviation Department  
PO Box 526624  
Miami, FL 33152  
  
Attention: Angela Marr  
Phone: 305-876-0231  
E-mail: [amarr@miami-airport.com](mailto:amarr@miami-airport.com)

Miami-Dade County  
Enterprise Technology Services Department  
5680 S.W. 87<sup>th</sup> Avenue  
Miami, FL 33173  
  
Attention: Ana Toirac, Accounts Payable  
Phone: 305-596-8316  
E-mail: [at00@miamidade.gov](mailto:at00@miamidade.gov)

Miami-Dade County  
General Services Administration  
111 N.W. 1<sup>st</sup> Street, Suite 2410  
Miami, FL 33128  
  
Attention: Maria E. Connally  
Phone: 305-375-3901

Fax: 305-375-4462  
E-mail: [mwhite@miamidade.gov](mailto:mwhite@miamidade.gov)

Miami-Dade County  
Clerk of the Courts/Accounts Payable  
140 West Flagler Street, Suite 1501  
Miami, FL 33130

Attention: Frank Detz  
Phone: 305-375-2312  
E-mail: [fdetz@miamidade.gov](mailto:fdetz@miamidade.gov)

Miami-Dade County  
Government Information Center  
111 N.W. 1<sup>st</sup> Street, Suite 2510  
Miami, FL 33128

Attention: Regla Lee  
Phone: 305-375-4572  
Fax: 305-375-2004  
E-mail: [rcl@miamidade.gov](mailto:rcl@miamidade.gov)

Miami-Dade County  
Police Department  
9105 N.W. 25<sup>th</sup> Street, Room 3055  
Doral, FL 33172-1500

Attention: Laura K. Romano  
Phone: 305-471-2596  
Fax: 305-471-2996  
E-mail: [lromano@mdpd.com](mailto:lromano@mdpd.com)

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

#### **ARTICLE 8. SHIPPING TERMS**

Shipping will be done on an FOB Destination basis. Invoicing and Shipping Address will be provided in the individual Purchase Orders issued against this contract. MDC may change this information by giving written notice to Seller.

#### **ARTICLE 9. MANNER OF PERFORMANCE**

9.1 IBM shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by IBM in all aspects of the Services. At the written request of the County explaining cause, IBM shall promptly remove from the Project any IBM employee, Subcontractor, or any other person performing Services hereunder for cause. IBM agrees that such removal of any of its employees does not require the termination or demotion of any employee by IBM.

9.2 IBM shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and

regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 10. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Seller shall be considered to be, at all times, employees of the Seller under its sole direction and not employees or agents of the County. The Seller shall supply competent employees. Miami-Dade County may require the Seller to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 11. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Seller is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Seller's sole direction, supervision and control. The Seller shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Seller's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Seller does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 12. INSURANCE**

The Contractor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000.

Unless otherwise mutually agreed to, all insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or



The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**NOTE: MIAMI-DADE COUNTY RFP NUMBER AND TITLE OF RFP MUST APPEAR ON EACH CERTIFICATE.**

**CERTIFICATE HOLDER MUST READ:**

**MIAMI-DADE COUNTY  
111 NW 1<sup>st</sup> STREET  
SUITE 2340  
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this Agreement.

**ARTICLE 13. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Seller shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

This Contract shall be binding upon the respective successors and assigns of the parties to this Agreement.

**ARTICLE 14. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 15. EARLY TERMINATION AND SUSPENSION OF WORK**

The County may terminate this Agreement at no cost to the County, if the Seller or connected Subcontractor attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

**ARTICLE 16. CONFLICT OF INTEREST**

The Contractor represents that:

16.1 No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

16.2 There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Seller without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of

government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Seller directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
- ii) is an employee, agent, advisor, or consultant to the Seller or to the best of the Seller's knowledge any subcontractor or supplier to the Seller.

16.3 Neither the Seller nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Seller shall have an interest which is in conflict with the Seller's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Seller provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

16.4 The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

16.5 In the event Seller has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Seller shall promptly bring such information to the attention of the County's Project Manager. Seller shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Seller receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 17. INSPECTOR GENERAL REVIEWS**

17.1 Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

17.2 Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

17.3 Exception. The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an

IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) inter-local agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award

17.4 Inspector General Powers. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

- i. Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

#### **ARTICLE 18. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

The parties understand that the County is a political subdivision of the State of Florida and as such is subject to the Florida Public Records Act and the Florida Government in the Sunshine Act. For that reason, the provisions of this Contract, including but not limited to those dealing with confidentiality and proprietary information, shall be understood to be enforceable only to the extent consistent with the limitations contained in those laws.

Seller agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Contract, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.

- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All Seller's and Subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. Seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance. Should this Ordinance come into effect, the Seller shall have the right to comply with established leave policy already in effect by the Seller.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Contract, Seller shall not be required pursuant to this Contract to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Seller, constitute a violation of any law or regulation to which Seller is subject, including but not limited to laws and regulations requiring that Seller conduct its operations in a safe and sound manner.

#### **ARTICLE 19. BANKRUPTCY**

The County reserves the right to terminate this Agreement, if, during the term of any contract the Seller has with the County, the Seller becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a Chapter 11 reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Seller under federal bankruptcy law or any state insolvency law.

#### **ARTICLE 20. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract [whether in Contract, statute, tort (such as negligence, or otherwise)] shall be governed and construed in accordance with the laws of the State of Florida, without application of the conflicts of law principles. The venue of any action on the Contract shall be laid in Miami-Dade County, Florida, and any action to determine the rights of obligations of the parties hereto shall be brought in the courts of the State of Florida.

#### **ARTICLE 21. FORCE MAJEURE**

21.1 Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions),

riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay.

21.2 In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

## **ARTICLE 22. EXTENSION OF TIME NOT CUMULATIVE**

In the event the Seller shall be delayed concurrently by two or more of the causes identified in Article 22, "Force Majeure" above, the Seller shall be entitled to a separate extension of time for each one of the causes but only one time period of extension shall be granted for the delay. In addition, the Seller shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Seller shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

## **ARTICLE 23. COUNTY USER ACCESS PROGRAM (UAP)**

**23.1 User Access Fee:** Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Seller providing goods or Services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or Services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

**23.2 Joint Purchase:** Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Seller must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Seller participation in this joint purchase portion of the UAP, however, is voluntary. The Seller shall notify the ordering entity, in writing, within 3 workdays of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Seller shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Seller for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Seller and shall be paid by the ordering entity less the 2% UAP.

**23.3 Seller Compliance:** If a Seller fails to comply with this Article, that Seller may be considered in default by the County.

**ARTICLE 24. ANNUAL APPROPRIATION**

The County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, except as to the portions of payments agreed upon and for which funds have been appropriated and budgeted. Service can be cancelled at any time that the Seller is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Seller for canceling services during the year except for charges incurred for services performed under this Agreement prior to the County's cancellation notice, and Seller will deliver to County all Deliverables performed up to the cancellation notice.

**ARTICLE 25. CONFIDENTIALITY**

25.1 As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law, Section 119 of the Florida Statutes. Notwithstanding anything else in this Article to the contrary, the County's compliance with, or good faith attempt to comply with the requirements of Chapter 119 of Florida Statute shall not be considered breach of this Agreement.

25.2 Survival. County's obligations under this Article 24 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

**ARTICLE 26. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Seller and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 27. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Seller without the express written consent of the County:

27.1 Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Seller first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

27.2 Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

27.3 Except as may be required by law, the Seller and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Seller or such parties has been approved or endorsed by the County.

**ARTICLE 28. PREPARATION OF CONTRACT**

This Agreement is the result of negotiation between the parties hereto and has been typed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Contract effective as of the Date herein set forth below

IBM Corporation

By: Emily B Loos

Name: Emily B. Loos

Title: Client Executive

Date: 09/11/2009

Attest: \_\_\_\_\_

Corporate Seal/Notary Seal

Miami-Dade County, Florida

By: Howard Piper

Name: HOWARD PIPER

Title: SPECIAL ASSISTANT

Date: 12/18/2009

Attest: A. H. O.

Clerk of the Board

Approved as to form  
and legal sufficiency

[Signature]  
Assistant County Attorney

